1. The HACG is certainly correct in its argument that Talley's challenge to the legality of the 1994 taking is barred by principles of res judicata and collateral estoppel.[3]

2. If, however, the HACG was entitled to summary judgment on Talley's claim concerning the HACG's alleged abandonment of the public use and sale of the property to a private citizen for a substantial profit in 1999,[4] it must be on some other ground; that issue could not have been adjudicated, either in the initial condemnation proceeding in 1994 or in the motion to set aside in 1997.[5] And the record shows that although that issue was raised by Talley in federal court, his federal suit was ultimately dismissed on jurisdictional grounds. Therefore, the HACG was not entitled to summary judgment on that claim on grounds of res judicata or collateral estoppel. We conclude, however, that the HACG was indeed entitled to summary judgment on the claim on other grounds. Where a summary judgment cannot be upheld for the reasons given by the trial court, we must decide whether the summary judgment

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[3] See generally *State v. Lejeune*, 277 Ga. 749, 756 (3) (594 SE2d 637) (2004).
[4] See Note: A Profit for the Taking: Sale of Condemned Property after Abandonment of the Proposed Public Use, 74 Wash. U.L.Q. 751 (1996).
[5] See *State v. Lejeune*, supra.

may be upheld on any other basis as a judgment that is right for any reason will be affirmed.[6]

The record shows that the condemnation proceeding was brought under the authority of Georgia's Urban Redevelopment Law (URL).[7] Enacted in 1955,[8] the URL authorizes Georgia municipalities and counties, either directly or through urban redevelopment agencies or housing authorities , to exercise the power of eminent domain for the acquisition and redevelopment of urban property which has been found to be a "slum area" as defined in the URL.[9] To effectuate redevelopment of condemned property, the URL authorizes a housing authority to sell, lease or otherwise transfer condemned property "for public use"; or for various specified private uses, i.e., "residential, recreational, commercial, industrial"; or for "other uses."[10]

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[6] *Precise v. City of Rossville*, 261 Fa. 210, 211 (3) (403 SE2d 47) (1991).
[7] OCGA § 36-61-1 et seq.
[8] Ga. L. 1955, pp. 354, 355, § 1.
[9] OCGA § § 36-61-1 through 36-61-17.
[10] OCGA § 36-61-10 (a); compare *Galloway v. Bd. Of Commissioners of Banks County*, 246 Ga. 472, 472 – 473 (271 SE2d 784) (1980) (implying that when condemnor abandons specific public use for which property was taken, it generally must devote the property to another "public" use).

The URL's precursor was the Redevelopment Law of 1946.[11] The 1946 law was found unconstitutional by the Supreme Court of Georgia in *Housing Authority of the City of Atlanta v. Johnson*,[12] on grounds that the power of eminent domain could not be used to acquire private property to sell to another private person for his own private use. Following the *Johnson* decision, however, the General Assembly adopted a resolution proposing that the Georgia Constitution be amended to authorize such use of the power of eminent domain.[13] The constitutional amendment was ratified by the voters, became part of the Georgia Constitution of 1945,[14] and has been carried forward into our 1976 and 1983 Constitutions.[15] In accordance with the constitutional amendment, the General Assembly enacted the URL in 1955 and, because of the constitutional amendment, our Supreme Court reluctantly sustained the law's constitutionality.[16]

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[11] Ga. L. 1946, pp. 157, 158, § 1.
[12] 209 Ga. 560 (74 SE2d 891) (1953).
[13] Ga. L. 1953, Nov.-Dec. Sess., p. 538.
[14] Art. XVI of the Ga. Const. of 1945.
[15] Art. IX, Sec. IV, Par. IV of the Ga. Const. of 1976; Art. IX, Sec. II, Paragraph VII (a) of the Ga. Const. of 1983; see *Nations v Downtown Development Auth. Or the City of Atlanta*, 255 Ga. 324, 329 (2) (d) (338 SE2d 240) (1986).
[16] *Bailey v. Housing Auth. Of City of Bainbridge*, Ga. 790 (107 SE2d 812) (1959); see also *Allen v. City Council of Augusta*, 215 Ga. 778 (113 SE2d 621) (1960).

Kelo v. City of New London[17] has ignited a national debate on the subject of government use of the power of eminent domain by taking private property from one person and selling it another such person or private enterprise for urban redevelopment. *Kelo* found such takings to be permissible under the Fifth Amendment of the United States Constitution and left it to the states to enact more restrictive condemnation laws if they so choose.

Georgia's nonrestrictive URL and its underlying constitutional authorization remain in place. Therefore, the HACG was entitled to summary judgment on Talley's complaint that it abandoned any "public use" of the property and sold it to a private citizen for " other uses," as such disposition of condemned property is authorized by the URL.[18]

Judgment affirmed. Ruffin, C.J., and Smith, P.J., concur.

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[17] Supra.

[18] Because the HACG was awarded indefeasible fee simple title to the property, it might also have sought dismissal of Talley's complaints concerning its post-condemnation activities based on lack of standing. See Sadtler v. City of Atlanta, 236 Ga. 396 (223 SE2d 819) (1976). In response, Talley might have argued that, as a citizen and taxpayer of the municipality, he has standing to challenge "ultra vires" actions of public officials. See Arneson v. Bd. Of Trustees of the Employees' Retirement Syst. Of Ga. , 227 Ga. 579, 580 (2) (361 SE2d 805) (1987); see also Galloway v. Bd. of Commissioners of Banks County, 246 GA. 472 (271 SE2d 784) (1980). In any event , the HACG did not challenge Talley's standing. We, therefore, do not decide the question.